

ORIGINAL

# OPEN MEETING ITEM

COMMISSIONERS  
KRISTIN K. MAYES – Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP



0000104455

Executive Director

## ARIZONA CORPORATION COMMISSION

DATE: NOVEMBER 2, 2009  
DOCKET NOS.: W-02450A-06-0626 and SW-20422A-06-0566  
TO ALL PARTIES:

Arizona Corporation Commission

**DOCKETED**

NOV - 2 2009



Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Order on:

WATER UTILITY OF GREATER TONOPAH, INC. and  
HASSAYAMPA UTILITY COMPANY, INC.  
(EXTENSION OF TIME DEADLINE CONTAINED  
IN DECISION NO. 70357)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

NOVEMBER 12, 2009

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

NOVEMBER 19, 2009 and NOVEMBER 20, 2009

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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AZ CORP COMMISSION  
DOCKET CONTROL

A handwritten signature in black ink, appearing to read "Ernest G. Johnson".  
ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

[www.azcc.gov](http://www.azcc.gov)

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail [SABernal@azcc.gov](mailto:SABernal@azcc.gov)

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES, Chairman  
4 GARY PIERCE  
5 PAUL NEWMAN  
6 SANDRA D. KENNEDY  
7 BOB STUMP

8 IN THE MATTER OF THE APPLICATION  
9 WATER UTILITY OF GREATER TONOPAH,  
10 INC. FOR APPROVAL OF AN EXTENSION OF  
11 ITS CERTIFICATE OF CONVENIENCE AND  
12 NECESSITY TO PROVIDE WATER UTILITY  
13 SERVICE IN MARICOPA COUNTY, ARIZONA.

DOCKET NO. W-02450A-06-0626

14 IN THE MATTER OF THE APPLICATION OF  
15 HASSAYAMPA UTILITY COMPANY, INC. FOR  
16 APPROVAL OF AN EXTENSION OF ITS  
17 CERTIFICATE OF CONVENIENCE AND  
18 NECESSITY TO PROVIDE WASTEWATER  
19 UTILITY SERVICE IN MARICOPA COUNTY,  
20 ARIZONA.

DOCKET NO. SW-20422A-06-0566

DECISION NO. \_\_\_\_\_

**ORDER**

21 Open Meeting  
22 November 19 and 20, 2009  
23 Phoenix, Arizona

24 **BY THE COMMISSION:**

25 \* \* \* \* \*

26 Having considered the entire record herein and being fully advised in the premises, the  
27 Commission finds, concludes, and orders that:

28 **FINDINGS OF FACT**

1. On May 16, 2008, the Commission issued Decision No. 70357, which conditionally approved the applications of Hassayampa Utility Company ("HUC") and Water Utility of Greater WUGT (collectively, "the Utilities") to extend their respective Certificates of Convenience and Necessity ("CC&N") to provide water and wastewater utility services in various parts of Maricopa County, Arizona. The Decision conditionally granted approval for the Utilities to extend their service areas to include an additional 22,000 acres.

2. On April 30, 2009, the Utilities filed a Motion for an Extension of Time ("Motion") to

comply with the conditions set forth in Decision No. 70357 as follows:

Company	Item Description	Due Date	Extension Request
WUGT	ADWR Designation of Assured Water Supply for the first subdivision	May 16, 2010	none requested
WUGT	Approval of Construction from MCESD for the initial water plant facilities, including production, storage and water distribution system to serve the initial phase of the development	May 16, 2010	December 31, 2012
HUC	Approval to Construct from MCESD for the sewer tie-in between Water Reclamation Facility Campus No. 1 and the initial phase of the development	April 30, 2009	December 31, 2012
HUC	Aquifer Protection Permit ("APP") for the Water Reclamation Facility Campus No. 1 needed to serve the initial phase of the development	April 30, 2009	December 31, 2012

The Utilities' Motion states that development in the extension area has been severely impacted by the current economic crisis; the Hassayampa Ranch Water Reclamation Facility ("WRF") Campus No. 1 has not been constructed and it will not be needed for several more years and the interconnect between Phase 1 of the development and the HUC WRF Campus No. 1 will not be needed for several more years; and it is not prudent for the Utilities to incur the costs for an interconnect at this time. The Motion also requests extensions of time to comply with the filing of its Approval of Construction ("AOC") for the initial water plant facilities; and the APP for the WRF Campus No. 1. The Utilities request an extension of time, until December 31, 2012, to meet the compliance items outlined above.

3. On June 25, 2009, Staff filed a Memorandum expressing concern that development in the extension area may be prolonged or may never happen. Based on the Utilities' admission that development is not imminent for several more years; the lack of evidence demonstrating a continuing need for service in the extension area; the excessive length of time requested by the Utilities' for the extension of time; and no apparent need for service in the foreseeable future; Staff recommends denial of the Utilities request for an extension of time. Further, Staff stated that HUC should be on notice that it is currently out of compliance with the Commission and both HUC and WUGT must satisfy the required compliance items or present further evidence to the Commission to substantiate its request for the extension of time.

4. On July 15, 2009, the Utilities filed a Reply in Support of Motion for Extension of

1 Time. The Utilities' reply states that although Staff requested "renewed requests for service," Staff  
2 does not cite any authority to support "the idea that renewed requests for service must be submitted  
3 with motions for extension of time." The reply cites other Decisions, where updated requests for  
4 service were not submitted with a motion for extension of time.<sup>1</sup> However, the reply did include four  
5 updated requests for service purportedly representing all of the water extension area, and the vast  
6 majority of the wastewater and recycled water extension area. Further, the reply states that Staff's  
7 recommendation that the Utilities build the facilities required in Decision No. 70357 would place an  
8 unnecessary financial burden on the Utilities and their ratepayers at this time. The reply renewed the  
9 Utilities' request for an extension of time to comply until December 31, 2012.

10 5. On August 18, 2009, by Procedural Order, Staff was directed to file a response to the  
11 Utilities' updated information by September 30, 2009.

12 6. On September 11, 2009, Staff filed a Memorandum in response to the Procedural  
13 Order issued August 18, 2009. Staff states that in reviewing the updated requests for service  
14 submitted by the Utilities they do not contain specific dates as to when development will take place;  
15 they do not define an apparent need for service in the near future; and that no request for service was  
16 submitted for the Desert Whisper development. Staff further states that it is aware that "due to a  
17 downturn in the economy many developers have gone bankrupt and developments have been  
18 abandoned across the state," and that although the developer letters submitted by the Utilities  
19 indicated that the approval process is on-going, they also state that development may not take place  
20 for several years. Staff continues to recommend denial of the Utilities' request for an extension of  
21 time. In the alternative, Staff recommends that the Commission issue the Utilities an Order  
22 Preliminary requiring full compliance with the outstanding compliance items by December 31, 2012,  
23 before a final Order is issued granting the CC&N extension.

24 7. On September 30, 2009, the Utilities filed a Request for Procedural Conference and  
25 Motion to Set Hearing. The Utilities state that their request for an extension of time is not a "run-of-  
26 the-mill" compliance matter and that the Utilities' request presents important policy issues. The  
27

28 <sup>1</sup> See Arroyo Water Co., Decision No. 70974 (May 5, 2009); Gold Canyon Sewer Corp., Decision No. 71101 (June 5, 2009); Baca Float Water Co., Decision No. 71170 (June 30, 2009).

1 Utilities state that Staff's recommendation fails to properly consider the need for long-term planning;  
2 promotion of responsible and sustainable water management; and does not consider the unique  
3 situation in the Lower Hassayampa Sub-Basin. The Utilities further state that Staff's  
4 recommendation is unprecedented and based on erroneous assumptions, and therefore a procedural  
5 conference is needed, and thereafter a hearing should be scheduled prior to the end of November  
6 2009.

7 8. According to the Utilities' request, the CC&N extension area includes several large  
8 developments, located in the Lower Hassayampa Sub-basin. The Utilities assert that:

- 9       ◦ long-term planning for the extensive use of recycled water has been conducted  
10           for the extension area;
- 11       ◦ the size of the proposed Belmont project in the extension area will make the  
12           use of purple pipe a "national leader;"
- 13       ◦ the developers' use of recycled water could make Arizona a leader in  
14           sustainable water use; and
- 15       ◦ it is critical for the Utilities to maintain its close working relationship with the  
16           Town of Buckeye in order to continue the on-going regional planning in the  
17           area.

18 The Utilities' request further points out that this is the first request for an extension of time related to  
19 Decision No. 70357; the requested extension of time is only a little more than two years away; Global  
20 has spent more than \$1 million on permitting in the extension area; and a hearing to resolve the issues  
21 surrounding the request for an extension of time is needed.

22 9. Staff has recommended denial of the Utilities request for an extension of time or in the  
23 alternative, granting the Utilities an Order Preliminary. The recommendation for an Order  
24 Preliminary and the Utilities' request that the Commission hear evidence on development timeframes  
25 in the extension area; the impact denial of the extension of time will have on the developers, Town of  
26 Buckeye, and Global, would require the Commission to, pursuant to A.R.S. § 40-252, "rescind, alter  
27 or amend" Decision No. 70357. To date, the Commission has not voted to rescind, alter or amend  
28 Decision No. 70357, pursuant to A.R.S. § 40-252. Therefore, the Utilities' request for an extension

1 of time should be denied.

2 **CONCLUSIONS OF LAW**

3 1. Water Utility of Greater Tonopah and Hassayampa Utility Company are public service  
4 corporations within the meaning of Article XV of the Arizona Constitution and A.R.S. §§40-281 and  
5 40-282 and 40-285.

6 2. The Commission has jurisdiction over Water Utility of Greater Tonopah and  
7 Hassayampa Utility Company and the subject matter of the Request for Additional Time to Comply  
8 with Commission Decision No. 70357.

9 3. The Utilities' request for an extension of time is denied.

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**ORDER**

IT IS THEREFORE ORDERED that Water Utility of Greater Tonopah's and Hassayampa Utility Company's request for an extension of time to comply with Commission Decision No. 70357 is denied.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,  
Executive Director of the Arizona Corporation Commission,  
have hereunto set my hand and caused the official seal of the  
Commission to be affixed at the Capitol, in the City of Phoenix,  
this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

YBK:db

1 SERVICE LIST FOR: WATER UTILITY OF GREATER TONOPAH, INC.  
2 and HASSAYAMPA UTILITY COMPANY, INC.

3 DOCKET NOS.: W-02450A-06-0626 and SW-20422A-06-0566

4 Graham Symmonds, Senior Vice President  
5 GLOBAL WATER MANAGEMENT  
6 21410 North 19<sup>th</sup> Avenue, Suite 201  
Phoenix, AZ 85027

7 Michael W. Patten  
8 Timothy J. Sabo  
9 ROSHKA DeWULF & PATTEN, PLC  
10 One Arizona Center  
400 East Van Buren Street, Suite 800  
Phoenix, AZ 85004  
Attorney for Water Utility of Greater Tonopah

11 Norman D. James  
12 Todd C. Wiley  
FENNEMORE CRAIG  
13 3003 North Central Avenue, Suite 2600  
Phoenix, AZ 85012  
Attorneys for Belmont Group

14 Janice Alward, Chief Counsel  
15 Legal Division  
ARIZONA CORPORATION COMMISSION  
16 1200 West Washington Street  
Phoenix, AZ 85007

17 Steven Olea, Director  
18 Utilities Division  
ARIZONA CORPORATION COMMISSION  
19 1200 West Washington  
Phoenix, AZ 85007

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